



American Federation
of Teachers, AFL-CIO

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June 10, 2020

RE: AbbVie and Allergan; File No. 191 0169

On behalf of the 1.7 million members of the American Federation of Teachers, most of whom are impacted by escalating prices of prescription drugs; we submit the following comments in opposition to the Federal Trade Commission's Notice of Proposed Consent Agreement involving the merger of AbbVie and Allergan.

The merger of these two companies will undoubtedly impact our members who rely on prescription medicines like Humira and others manufactured, distributed and sold by these two corporations. As set out more fully below, the AFT has growing concern about the impact of increased consolidation in the prescription drug industry and the bearing that concentration has on prices, access and innovation.

1. Anti-competitive behavior and price gouging behavior by both corporations stack the deck against patients who could be faced with increased costs and less access to medicines they need to treat illness and stay healthy.

AbbVie and Allergan both have a history of anti-competitive behavior and price gouging patients on prescription drugs. There is no reason to believe that the abusive profiteering each company rampantly conducted as individual entities will stop once they are merged into a single mega-corporation. In fact, consolidation in other areas of the healthcare system¹ demonstrates that the opposite is true: Consolidation most often results in higher costs and less access for consumers.

AbbVie manufactures Humira, a treatment for rheumatoid arthritis and the world's best-selling drug, which has made the company \$130 billion since its introduction in 2003. AbbVie holds 136 patents on Humira, [prompting a lawsuit](#) for using a patent "thicket" to block competition that would make medicine more affordable and inviting criticism from lawmakers in Congress. The rampant price gouging on Humira has resulted in increased cost for the healthcare system,² for programs like Medicare and Medicaid and for patients paying out of pocket for the medicine.

¹<https://www.americanprogress.org/issues/healthcare/reports/2018/12/05/461780/provider-consolidation-drives-health-care-costs/>

² <https://www.modernhealthcare.com/politics-policy/abbvie-sued-over-humira-patent-thicket>



Allergan has also attracted notice for its persistent gaming of the patent system, price gouging on medicines and squashing competition so that it can keep prices high. So egregious has Allergan's conduct been that the company's own shareholders have chastised Allergan for poor governance, risking the company's reputation in lawsuit after lawsuit, and other shady behavior.³

2. The divestment of some drug brands to Nestle is not an adequate enough remedy to anti-competitive behavior to address the dangers of the merger and doesn't include assurances that these medicines will continue to be available to consumers who need them.

For the first time, the FTC is proposing a remedy that would turn over drug brands to a corporation that doesn't sell prescription drugs and has no expertise in these products: Nestle. While Nestle does now market some health food items and nutritional products, it is primarily still a food and drinks company; it has no expertise on any of the prescription medicines it is acquiring in the divestment agreement nor on the illnesses those drugs treat, such as pancreatic cancer or cystic fibrosis.

Unloading drugs on Nestle in order to facilitate a merger may not be in the best interest of patients or the company and needs much more exploration before proceeding. Past experience shows that there's no guarantee that just divesting to any buyer that is available doesn't always provide a long-term solution.⁴ In a massive behemoth like Nestle, the new prescription drug acquisitions will be a tiny fraction of its holdings. There is not clear evidence the company will prioritize the success of these products, that the corporate governance structure is committed to the deal, or that there will be accountability for successful acquisition that patients are depending on to continue accessing the medicine.

3. Turning over the new IL-25 drug that AbbVie is developing to AstraZeneca reduces competition, provides the corporation with a massive windfall and control over pricing the new drug, possibly at the expense of patients' health, well-being and lives.

AbbVie and Allergan are two of the largest pharmaceutical companies in the world and have both faced scrutiny in the past for anti-competitive corporate behavior and price gouging.⁵ If the merger is finalized, it will make AbbVie the fourth-largest drug corporation in the world.⁶ That may ensure higher profits, but it doesn't necessarily help patients get more affordable prices.

The FTC's current evaluation of mergers based on whether the two entities have any overlap in products and then ordering that any competing products be divested to proceed with the merger doesn't address other harms caused by consolidation. For instance, research shows that increased

³<https://www.businesswire.com/news/home/20190219005695/en/Appaloosa-Sends-Letter-Allergan-Board-Directors-Response>

⁴ See page 6, Commissioner Rohit Chopra's Dissent:
https://www.ftc.gov/system/files/documents/public_statements/1574583/191-0169_dissenting_statement_of_commissioner_rohit_chopra_in_the_matter_of_abbvie-allergan_redacted.pdf

⁵ <https://www.citizen.org/article/by-any-means-necessary/>

⁶ <https://www.fiercepharma.com/pharma/abbvie-allergan-merger-may-face-regulatory-delay-due-to-covid-19-report>

consolidation increases monopoly control over prices in the industry by inhibiting competition. Diminished competition limits patients' choices when it comes to medicines, increases prices, and typically results in decreased spending on research, development and innovation.⁷

The impact of consolidation in the pharmaceutical industry on prices is already a well-documented phenomenon as is the impact on profits. Patent monopolies on prescription drugs generate more profits than most other industries because drugmakers can set prices as high as they want and keep them high.⁸

The FTC proposal that AbbVie and Allergan negotiate a deal with AstraZeneca for a new IL-23 inhibitor medicine that both companies were separately developing for Crohn's disease and ulcerative colitis may also impact the price of the medicine when it comes to market by limiting competition.

4. Further investigation, consideration and exploration on the longer-term impacts of the merger of these two companies must be done to protect patients from deleterious impacts.

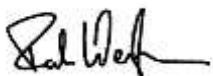
The mission of the FTC is to protect consumers and competition by preventing anti-competitive, deceptive and unfair business practices through law enforcement, advocacy and education without unduly burdening legitimate business activity. Allowing a merger between AbbVie and Allergan that seems likely to result in more concentrated price-setting power, while including no real safeguards for consumers, does not serve the goal of consumer protection. Pharmaceutical companies like AbbVie and Allergan have time and time again shown inflated profits even at the expense of sick people's lives. Allowing this kind of merger gives these two companies even more control over patients' lives putting them in danger of losing access to medicines that are crucial to their well-being.

Without greater investigation, more due diligence and stricter parameters in the agreement, there is no way to know what will happen to the products divested to Nestle and AstraZeneca or whether these corporations will make medicines in their charge accessible for consumers. Ultimately, access to medicines may be lost and health may suffer as a result.

For the reasons outlined above, we urge the FTC commissioners to reconsider the agreement and, indeed, the overall process by which it was reached and make revisions that better serve the interests of consumers who depend on these medicines.

Thank you for considering these comments.

Respectfully,



Randi Weingarten
AFT President

⁷ <https://hbr.org/2016/08/research-innovation-suffers-when-drug-companies-merge>

⁸ https://openmarketsinstitute.org/wp-content/uploads/2019/12/WhitePaper_DrugPrices_Bluhm.pdf